

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
OCT 22, 2008
THOMAS K. KAHN
CLERK

No. 08-10505

D. C. Docket No. 06-21406-CV-FAM

EUGENE CAVICCHI,

Plaintiff-Appellant,

versus

SECRETARY OF HOMELAND SECURITY,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Florida

(October 22, 2008)

Before TJOFLAT and CARNES, Circuit Judges, and THRASH,* District Judge.

PER CURIAM:

* Honorable Thomas W. Thrash, United States District Judge for the Northern District of Georgia, sitting by designation.

Eugene Cavicchi appeals from the district court’s order entering summary judgment against him and in favor of his former employer, the Department of Homeland Security, previously known as the United States Customs Service, in the lawsuit he filed against it.

In the lawsuit Cavicchi put forward a number of claims, all but one of which the district court adequately dealt with in its summary judgment order. The lone exception is the retaliation claim. Although the court’s order correctly cites Burlington Northern & Sante Fe Railway Co. v. White, 548 U.S. 53, 126 S. Ct. 2405 (2006), as the source of the standard for determining whether a given action is an adverse employment action, there are places in the order where the court actually refers to the pre-Burlington Northern standard—whether there had been an “ultimate employment decision.” The correct standard is whether the employer’s actions “would have been materially adverse to a reasonable employee.” Id. at 57, 126 S.Ct. at 2409.

The district court’s misstatement of the standard in some places in its order does not hinder our review because we review de novo a district court’s application of law to fact. Having reviewed the judgment that way, we reach the same conclusion that the district court did: the Department of Homeland Security was entitled to summary judgment on Cavicchi’s retaliation claim. All of the

actions about which Cavicchi complains either would not have been materially adverse to a reasonable employee, or they were not shown to have been caused by any protected conduct, or both.

We affirm the grant of summary judgment on the other claims for the reasons set out in the district court's order.

Cavicchi also contends that the district court abused its discretion in a number of procedural rulings it made, but we are not convinced that it did so.

AFFIRMED.